

REMARKS:

Claims 1, 2, 4, 13, 15, 17-25, 27 and 28 remain pending in this application. Claims 2, 4, 13, 15, 17, 20, 21, and 23 have been amended, and entry of these amendments is respectfully requested.

Examiner Interview

Applicant thanks the Examiner for the courtesy of the telephone interview conducted Applicant's representative, Mr. Alexander Courtade (Reg. No. 65,635), on January 11, 2010. During the interview, Applicant's representative discussed the currently pending rejections as further indicated in the remarks below. An agreement was reached that if claims 2, 15, and 20 were amended to recite a "bit count value," all § 112 rejections would be withdrawn.

Double Patenting Rejections

All claims stand rejected "on the ground of nonstatutory obviousness-type double patenting as being unpatentable over" "co-pending application 10/945,633" (now U.S. Patent No. 7,646,760, issued January 12, 2010). Final Office Action at 2. During the interview, the Examiner stated that these rejections would be withdrawn if a terminal disclaimer was filed. Without conceding the propriety of the rejections, Applicant is filing a terminal disclaimer, and requests withdrawal of the present double patenting rejections.

Section 112 Rejections

All claims currently stand rejected under § 112, second paragraph. See Final Office Action at 3. Without conceding the propriety of the rejections, Applicant has amended the claims to advance the case.

During the interview, the Examiner agreed with Applicant's representative that claims 1 and 18 did comply with § 112, and no amendment to those claims was necessary. The Examiner also indicated that if claims 2, 15, and 20 were amended to recite the use of a "bit count value," they would be allowable.¹ Accordingly, claim 2 has been amended to recite "...wherein the switch is further configured" "to transmit the packet on [a] second port" "based on ... a bit count value"

¹ The Examiner further indicated that to comply with § 112, there was no need to recite the "formula" described in the Final Office Action on the bottom of page 3 and the top of page 4.

(emphasis added). Claims 15 and 20 have been similarly amended. Applicant thus respectfully requests entry of the amendments and withdrawal of the rejections under § 112.

CONCLUSION:

Applicant respectfully submits the application is in condition for allowance, and a notice to that effect is requested.

If any extensions of time are necessary to prevent the above-referenced application from becoming abandoned, Applicant hereby petitions for such extension.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment, to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account No. 501505/6257-14502/DMM.

Respectfully submitted,

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By: Dean M. Munyon

Dean M. Munyon

Reg. No. 42,914

Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C.
P. O. Box 398
Austin, Texas 78767
(512) 853-8847